

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:04CV265

JIMMY DAWSON,

Plaintiff,

Vs.

**U.S. TEXTILE CORP., a North Carolina)
Corporation; and CONSOLIDATED)
WORK INDUSTRIES, INC., a North)
Carolina Corporation,)**

Defendants.

ORDER

THIS MATTER is before the Court on the Magistrate Judge's Memorandum and Recommendation, filed August 4, 2005.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On August 4, 2005, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding the motion of Defendant Consolidated Work Industries, Inc., to dismiss. The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 14 days of service of the Recommendation; the period within which to

file objections expired on August 22, 2005. No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the motion to dismiss be denied.

IT IS, THEREFORE, ORDERED that the motion of Defendant Consolidated Work Industries, Inc., to dismiss is hereby **DENIED** without prejudice to renewal in the form of a motion for summary judgment at the conclusion of discovery.

Signed: August 31, 2005

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

